

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) APRIL 12, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 16
 DEFENDANT.)
) PAGES 2456 - 2464

TRANSCRIPT OF ZOOM TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
KELLY VOLKAR
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:
IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP
BY: MOLLY MCCAFFERTY
SHAWN ESTRADA
THE ORRICK BUILDING
405 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105

BY: JEFFREY COOPERSMITH
AARON BRECHER
AMANDA MCDOWELL
701 FIFTH AVENUE, SUITE 5600
SEATTLE, WASHINGTON 98104

BY: STEPHEN CAZARES
77 SOUTH FIGUEROA STREET, SUITE 3200
LOS ANGELES, CALIFORNIA 90017

BY: AMY WALSH
51 W 52ND STREET
NEW YORK, NEW YORK 10019

1 SAN JOSE, CALIFORNIA

APRIL 12, 2022

2 P R O C E E D I N G S

10:17AM 3 (COURT CONVENED AT 10:17 A.M.)

10:17AM 4 (JURY OUT AT 10:17 A.M.)

10:18AM 5 THE COURT: THANK YOU. GOOD MORNING EVERYONE.

10:18AM 6 LET'S CALL THIS MATTER 18-258, UNITED STATES VERSUS

10:19AM 7 BALWANI.

10:19AM 8 THIS IS A REMOTE PROCEEDING.

10:19AM 9 FIRST, LET ME CAPTURE THE APPEARANCE OF THE PARTIES.

10:19AM 10 FOR THE GOVERNMENT, PLEASE?

10:19AM 11 MR. SCHENK: GOOD MORNING, YOUR HONOR.

10:19AM 12 JEFF SCHENK ON BEHALF UNITED STATES.

10:19AM 13 I'M JOINED BY JOHN BOSTIC, ROBERT LEACH, AND KELLY VOLKAR.

10:19AM 14 THE COURT: THANK YOU.

10:19AM 15 AND FOR THE DEFENDANT?

10:19AM 16 MR. COOPERSMITH: GOOD MORNING, YOUR HONOR.

10:19AM 17 JEFF COOPERSMITH FOR MR. BALWANI, WHO IS PRESENT ON ZOOM,

10:19AM 18 AND I'M JOINED BY STEPHEN CAZARES AND AMY WALSH AND OTHER

10:19AM 19 COLLEAGUES AS WELL.

10:19AM 20 THE COURT: THANK YOU. GOOD MORNING.

10:19AM 21 AND DO YOU AND YOUR CLIENT CONSENT TO THIS PROCEEDING,

10:19AM 22 MR. COOPERSMITH, VIA REMOTE TECHNOLOGY?

10:19AM 23 MR. COOPERSMITH: YES, YOUR HONOR. AND IF IT'S

10:19AM 24 NECESSARY, I CAN CONFER WITH MR. BALWANI OFF OF THE ZOOM IF

10:19AM 25 THAT BECOMES NECESSARY. SO THANK YOU.

10:19AM 1 THE COURT: ALL RIGHT. THANK YOU.

10:19AM 2 THIS IS A -- WE'RE GOING TO DISCUSS PROCEDURAL MATTERS
10:19AM 3 ONLY, NOT ANYTHING SUBSTANTIVE REGARDING THE CASE, AND THIS IS
10:20AM 4 REALLY ABOUT SCHEDULING, TO CONTINUE OUR CONVERSATION ABOUT
10:20AM 5 SCHEDULING.

10:20AM 6 I WANTED TO FOLLOW UP WITH A COUPLE OF INFORMATIONS, I
10:20AM 7 SHOULD SAY, THAT WE RECEIVED FROM JURORS.

10:20AM 8 LET'S START WITH THURSDAY. PLEASE RECALL THAT I HAD TRIED
10:20AM 9 TO SEE IF WE COULD HAVE SESSION ON THURSDAY AFTERNOON.

10:20AM 10 WE'VE REACHED OUT, OUR COURTROOM DEPUTY REACHED OUT TO
10:20AM 11 JURORS, AND IT APPEARS THAT THREE JURORS HAVE ISSUES THAT WOULD
10:20AM 12 NOT ALLOW US TO HAVE THURSDAY AFTERNOON.

10:20AM 13 JUROR 10 AND JUROR 2, IT LOOKS LIKE THEY HAVE PATIENTS
10:20AM 14 BOOKED, AND JUROR NUMBER 3 HAS A WORK SESSION FROM THE MORNING
10:20AM 15 UNTIL NOON.

10:20AM 16 SO THEORETICALLY WE COULD COME IN IN THE AFTERNOON. I'LL
10:20AM 17 MAKE INQUIRY OF THE TWO OTHER INDIVIDUALS WITH PATIENT
10:21AM 18 SCHEDULING TO SEE IF THOSE COULD BE MOVED. I'LL MAKE INQUIRY
10:21AM 19 TOMORROW, BUT I JUST WANTED TO LET YOU KNOW THAT.

10:21AM 20 ANY COMMENT? ANYTHING FROM ANYBODY ABOUT THAT?

10:21AM 21 MR. SCHENK: NO. THANK YOU, YOUR HONOR.

10:21AM 22 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

10:21AM 23 THE COURT: OKAY. AND THEN REGARDING FRIDAY, FRIDAY
10:21AM 24 IS GOOD FRIDAY. I HAD SUGGESTED THAT THE COURT IS THINKING OF
10:21AM 25 BREAKING FRIDAY PERHAPS HALF DAY. WE DID RECEIVE COMMUNICATION

1 FROM JUROR NUMBER 8 WHO INDICATED THAT FOR SOME REASON HE MADE
2 AN APPOINTMENT FOR A -- A MEDICAL APPOINTMENT FOR FRIDAY AT
3 1:00 P.M. SO THAT MEANS THAT WE PERHAPS COULD GO ALL MORNING.

4 I SHOULD TELL YOU, AGAIN, I HAVE LOOKED AT MY SCHEDULE,
5 AND FRIDAY WE WOULD -- I'M UNAVAILABLE FROM NOON TO 12:30. I
6 JUST HAVE A ZOOM CALL FROM THE ADMINISTRATIVE OFFICE AT THAT
7 TIME. SO IF WE WERE IN SESSION ON FRIDAY, WE COULD BREAK AT
8 NOON, IF YOU'RE INTERESTED IN DOING THAT.

9 I'LL ALSO ASK TOMORROW, OUR JURORS, WHETHER THEY CAN COME
10 IN EARLY FRIDAY MORNING IF THAT'S POSSIBLE. BUT THAT'S WHAT I
11 INTEND TO DO.

12 ANY THOUGHTS ABOUT THIS, ABOUT FRIDAY? SUGGESTIONS? I'M
13 OPEN TO SUGGESTIONS AS WELL.

14 MR. SCHENK: I THINK THAT THAT MAKES SENSE FROM THE
15 GOVERNMENT'S PERSPECTIVE, THAT IS, STARTING EARLY, IF POSSIBLE,
16 ON FRIDAY, AND GOING UNTIL NOON.

17 WE DISCUSSED BREAKING EARLY YESTERDAY, AND THIS MIGHT BE A
18 LITTLE BIT EARLIER THAN WE WOULD OTHERWISE PLAN TO ADJOURN FOR
19 THE DAY, BUT IT SEEMS TO MAKE SENSE TO CAPTURE AS MUCH TIME AS
20 POSSIBLE UP TO AND INCLUDING NOON.

21 THE COURT: OKAY. MR. COOPERSMITH?

22 MR. COOPERSMITH: NOTHING TO ADD TO THAT,
23 YOUR HONOR. THANK YOU.

24 THE COURT: ALL RIGHT. THANK YOU.

25 LET ME MOVE TO MAY/JUNE. WE ALSO RECEIVED -- OUR

10:23AM 1 COURTROOM DEPUTY RECEIVED INFORMATION FROM JUROR NUMBER 8 WHO
10:23AM 2 INDICATED OUT OF STATE TRAVEL FROM MAY 27TH, I THINK IT'S
10:23AM 3 MAY 27TH, THAT DAY MAY 27, AND THEN JUNE 14TH TO JUNE 20TH.

10:23AM 4 AND APPARENTLY THIS JUROR HAS A SON WHO PLAYS COMPETITIVE
10:23AM 5 BASEBALL, AND THERE ARE TOURNAMENTS THAT THAT JUROR HAS
10:23AM 6 INDICATED THAT THEY WOULD LIKE TO ATTEND.

10:23AM 7 ALSO FOR THAT TIME PERIOD, THAT IS MAY/JUNE, THE JUROR
10:23AM 8 INDICATED A VACATION, OUT-OF-STATE VACATION FROM JUNE 26TH TO
10:23AM 9 JULY 4TH.

10:24AM 10 I SHOULD TELL YOU, TURNING TO THE COURT'S SCHEDULE,
10:24AM 11 MAY 27TH IT'S -- IT LOOKS LIKE WE COULD HAVE A BREAK, I'D LIKE
10:24AM 12 TO HAVE A BREAK, MAYBE AN HOUR, A 90 MINUTE LUNCH BREAK FROM
10:24AM 13 12:30 TO 2:00 O'CLOCK, OR AS CLOSE TO 2:00 O'CLOCK AS I COULD
10:24AM 14 GET IT, IF THAT'S POSSIBLE ON MAY 27TH. THAT'S THE ONLY OTHER
10:24AM 15 ISSUE FOR MAY.

10:24AM 16 SO MAY 27TH, THAT'S A FRIDAY, IF WE COULD SOMEHOW
10:24AM 17 INCORPORATE AN HOUR, AN HOUR OR TWO, 70, 75 MINUTES, MAYBE A 90
10:24AM 18 MINUTE BREAK THERE, THAT WOULD, THAT WOULD BE BENEFICIAL. AND
10:24AM 19 I'M GOING TO CHECK WITH JUDGE GILLIAN. HE'S ASKED ME TO DO
10:25AM 20 SOMETHING. I'M GOING TO CHECK WITH HIM AS TO WHETHER THAT TIME
10:25AM 21 WOULD WORK AS OPPOSED TO -- I THINK HE WANTED AN HOUR, ALMOST
10:25AM 22 TWO HOURS. I CAN'T DO THAT. BUT MAYBE AN EXTENDED LUNCH ON
10:25AM 23 THE 27TH.

10:25AM 24 MOVING TO JULY, WE RECEIVED JULY CONFLICT INFORMATION FROM
10:25AM 25 JURORS. ONE JUROR IS JULY 8TH THEY'VE INDICATED THEY CANNOT BE

10:25AM 1 PRESENT AND ANOTHER JUROR SAID JULY 12TH TO THE 19TH. AND THEN
10:25AM 2 THE JURORS WITH THE BASEBALL ISSUES INDICATED JULY 20TH TO
10:25AM 3 AUGUST 2ND.

10:25AM 4 I'M FULLY CONFIDENT THAT WE'LL BE COMPLETED WITH THE TRIAL
10:25AM 5 BY THEN, BUT I JUST WANTED TO SHARE THAT INFORMATION WITH YOU
10:25AM 6 OUT OF AN ABUNDANCE OF CAUTION.

10:25AM 7 I'M ALSO ASKING STAFF TO -- WE'RE LOOKING AT SEEING ABOUT
10:25AM 8 MOVING OUR CIVIL CALENDARS. ON THURSDAY I TYPICALLY HAVE A
10:26AM 9 CIVIL CALENDAR ON THURSDAY, AND WE'RE SEEING WHAT WE CAN DO TO
10:26AM 10 MOVE MATTERS, OUR CIVIL CALENDARS, SUCH THAT WE CAN CAPTURE
10:26AM 11 PERHAPS THURSDAY MORNINGS OR THURSDAY AFTERNOONS FOR ADDITIONAL
10:26AM 12 TIME IN OUR TRIAL.

10:26AM 13 I'D LIKE TO DO THAT AS SOON AS POSSIBLE TO GIVE THE JURORS
10:26AM 14 AS MUCH PLANNING INFORMATION AS POSSIBLE.

10:26AM 15 ANY COMMENT ABOUT THAT, ABOUT TRYING TO CAPTURE SOME
10:26AM 16 THURSDAY TIME?

10:26AM 17 MR. SCHENK: I THINK THAT THAT'S A GREAT IDEA,
10:26AM 18 YOUR HONOR.

10:26AM 19 IT LOOKS LIKE FROM WHAT WE RECEIVED, ALTERNATE NUMBER 2 IS
10:26AM 20 BOOKING PATIENTS ON DARK DAYS, BUT MAYBE IF WE GIVE SOME
10:26AM 21 ADVANCE NOTICE, THAT WILL ALLOW THE ALTERNATE JUROR TO SCHEDULE
10:26AM 22 PATIENTS AND ALSO ATTEND COURT AT THE APPROPRIATE TIMES.

10:26AM 23 THE COURT: RIGHT.

10:26AM 24 MR. COOPERSMITH, ANYTHING FROM YOU?

10:26AM 25 MR. COOPERSMITH: I AGREE WITH MR. SCHENK'S COMMENT

10:26AM 1 ON THAT. THANK YOU, YOUR HONOR.

10:26AM 2 THE COURT: OKAY. AND ONE THING I WILL -- I INTEND
10:27AM 3 TO DO TOMORROW PERHAPS IS TO ADDRESS OUR SCHEDULING ISSUE AND
10:27AM 4 INFORM THE JURORS THAT IT'S MY INTENT TO KEEP US ON OUR
10:27AM 5 ORIGINAL SCHEDULE, THAT'S MY INTENT.

10:27AM 6 HOWEVER, TO ACCOMPLISH THAT, IT WOULD APPEAR THAT WE WILL
10:27AM 7 HAVE TO ADD SOME ADDITIONAL TIME TO OUR DAYS AND/OR ADD
10:27AM 8 ADDITIONAL DAYS TO OUR SCHEDULE. AND THAT IS THE PROPOSITION
10:27AM 9 THAT I WOULD PRESENT TO THEM, THAT TO MAINTAIN OUR SCHEDULE FOR
10:27AM 10 REASONS THAT HAPPEN IN EVERY TRIAL, AND I'M NOT POINTING
10:27AM 11 FINGERS AT ANYONE, THIS IS JUST THE UNIVERSE OF TRIALS,
10:27AM 12 SCHEDULING ISSUES COME UP, BOTH WITH THE COURT AND WITH TRAVEL
10:27AM 13 SCHEDULES AND OTHER THINGS.

10:27AM 14 SO THAT'S THE CONVERSATION THAT I INTEND TO HAVE WITH THEM
10:27AM 15 TOMORROW, THAT IS, TO KEEP US ON OUR SCHEDULE, OR AS CLOSE TO
10:27AM 16 IT AS POSSIBLE, WE MAY HAVE TO ADD SOME ADDITIONAL TIMES AND
10:28AM 17 DAYS, AND I'LL DO THE BEST I CAN TO DO THAT.

10:28AM 18 I CAN'T RECALL, AND PERHAPS ONE OF YOU CAN REMIND ME, I
10:28AM 19 DID TRY TO GET AN EARLY START.

10:28AM 20 WAS THERE A JUROR OR TWO THAT SUGGESTED THAT THERE WAS A
10:28AM 21 PROBLEM? I THINK THERE WAS A DROP OFF, A CHILDCARE DROP OFF AT
10:28AM 22 SCHOOL FOR ONE JUROR PERHAPS THAT WAS DROPPING OFF AT 8:30 I
10:28AM 23 THINK IF I RECALL.

10:28AM 24 THE CLERK: THAT'S WHAT I WAS TOLD, YOUR HONOR.

10:28AM 25 THE COURT: OKAY. THANK YOU.

10:28AM 1 BUT WE'LL MAKE SOME INQUIRY. PERHAPS THAT JUROR CAN MAKE
10:28AM 2 SOME ADJUSTMENTS.

10:28AM 3 THAT'S WHAT I WANTED TO DISCUSS, AGAIN, TODAY JUST WITH
10:28AM 4 YOU THE MOST IMMEDIATE SCHEDULING ISSUES AND THE COURT'S DESIRE
10:28AM 5 TO INCREASE TIME AS BEST I CAN.

10:28AM 6 ANY OTHER COMMENTS, OBSERVATIONS ABOUT ANY OF THIS FROM
10:28AM 7 ANYONE?

10:28AM 8 MR. SCHENK: NOTHING FROM THE GOVERNMENT.

10:28AM 9 THANK YOU.

10:28AM 10 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

10:29AM 11 THE COURT: OKAY. THEN WE'LL SEE EACH OTHER
10:29AM 12 TOMORROW MORNING AT 8:30. WE HAVE ONE MATTER TO COVER OUTSIDE
10:29AM 13 OF THE PRESENCE OF THE JURY, AND THEN HOPEFULLY WE CAN GET
10:29AM 14 THROUGH TOMORROW A FULL DAY UNTIL 4:00 TOMORROW.

10:29AM 15 AND THEN FRIDAY IT LOOKS LIKE WE'LL BREAK, AND I'LL TELL
10:29AM 16 THEM WE'LL BREAK AT NOON OR SOME TIME THERE ABOUT.

10:29AM 17 OKAY. THANKS EVERYONE. THANKS FOR THE SHORT NOTICE. I
10:29AM 18 APOLOGIZE FOR THE GLITCH THIS MORNING. OUR SYSTEM WAS A LITTLE
10:29AM 19 GLITCHY, BUT I'M GLAD WE ALL GOT TOGETHER, AND WE'LL SEE YOU
10:29AM 20 TOMORROW. THANK YOU.

10:29AM 21 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

10:29AM 22 MR. SCHENK: THANK YOU, YOUR HONOR.

10:29AM 23 THE CLERK: COURT IS ADJOURNED.

10:29AM 24 (COURT ADJOURNED AT 10:29 A.M.)
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: APRIL 12, 2022